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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1990

Addendum

SENEGAL*

[2 April 1991]

Introduction

1. The submission of this report is a token of respect for the international commitments entered into by the Republic of Senegal, since, in accordance with article 40 of the International Covenant on Civil and Political Rights, States parties to the Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights.

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* For the initial report submitted by the Government of Senegal, see CCPR/C/6/Add.2, for its consideration by the Committee, see CCPR/C/SR.213, SR.214 and SR.217 dated 31 March and 2 April 1980 and Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 40 (A/35/40), paras. 197-238. For the second periodic report submitted by the Government of Senegal, see CCPR/C/37/Add.4, for its consideration by the Committee, see CCPR/C/SR.721-724 dated 6 and 7 April 1987 and Official Records of the General Assembly, Forty-second Session, Supplement No. 40 (A/42/40), paras. 181-223.

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2. Senegal's report to the Human Rights Committee consists of two main parts: information on the general legal framework within which the civil and political rights recognized in the Covenant are protected, and information in relation to each of the articles in parts I, II and III of the Covenant, particularly information on the implementation of the individual provisions of the different articles.

I. GENERAL LEGAL FRAMEWORK WITHIN WHICH CIVIL AND POLITICAL RIGHTS ARE PROTECTED IN SENEGAL

3. It should be borne in mind that, when it acceded to international sovereignty, the Republic of Senegal was constituted as a democratic State founded on the rule of law and, in particular, on the primacy of the human rights laid down in the 1789 Declaration of the Rights of Man and of Citizens and the 1948 Universal Declaration of Human Rights. This commitment to human rights found its first expression in the Constitution which, in addition to making reference to them in the preamble, incorporated them in the actual body of the text, in articles 6 to 20, which make specific provision for the protection of human rights in Senegal.

4. Senegal's commitment to human rights also found expression in the establishment of a judiciary that really is independent of the other two powers and impartial in its operation. The two highest bodies of the judiciary guarantee its independence, and the protection of human rights occupies a prominent place in the work of both: the Higher Council of the Judiciary deals with petitions of clemency and guarantees the independence of the bench through its appointment of judges, while the Supreme Court, as a court of final appeal open to any litigant, is a valuable regulator of legal standards.

5. At the international level this commitment is reaffirmed in article 79 of the Constitution, which recognizes the primacy of international obligations over national legislation; in other words, any national law must be consistent both with treaties and conventions that the country has ratified and with the Constitution itself. At the constitutional level, it should be noted that in the preamble to the country's very first Constitution the Senegalese authorities proclaimed the Senegalese people's attachment to basic human rights as set forth in the 1789 Declaration of the Rights of Man and of Citizens and in the 1948 Universal Declaration of Human Rights. In other words, both those international instruments are an integral part of our country's legal system.

6. Although it did not have the force of law at the time of its adoption, the 1948 Universal Declaration of Human Rights has since had an unquestionable influence on the development of contemporary international law, being a source of inspiration for several constitutions and national laws and for many human rights conventions and treaties. This is true of the following conventions to which Senegal is a party by accession or ratification:

(a) The International Convention on the Elimination of All Forms of Racial Discrimination;

(b) The International Convention on the Suppression and Punishment of the Crime of Apartheid;

(c) The International Covenant on Economic, Social and Cultural Rights;

(d) The Convention on the Elimination of All Forms of Discrimination against Women;

(e) The International Convention against the Taking of Hostages;

(f) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

7. It should also be pointed out that the International Covenant on Civil and Political Rights contains an important provision which did not appear in the 1948 Universal Declaration of Human Rights - the right of all peoples to self-determination, and to enjoy and freely dispose of their natural wealth and resources. A little further on we shall return to this provision, showing how it is being applied by Senegal in its foreign policy.

II. INFORMATION IN RELATION TO EACH OF THE ARTICLES OF THE COVENANT

8. In the submission of information in relation to each of the articles of the Covenant, all the basic human rights provided for and protected by the Covenant will be reviewed and compared with Senegalese domestic law; conclusions regarding the concrete measures taken to protect them will then be drawn.

Article 1. The right of all peoples to self-determination

9. The right of all peoples to self-determination and to dispose of their natural wealth is one of the major political and philosophical principles set forth in the preamble to the Constitution of Senegal. Senegal's commitment to the defence of this right is of both historical and current relevance. It was evident, in the past, in the positions Senegal adopted on the wars of national liberation in Guinea-Bissau and Cape Verde - to name but two countries - and can still be seen in Senegal's stand on the problems of Western Sahara and, until it obtained its independence, Namibia. The same commitment also explains the dispatch of a Senegalese contingent to Saudi Arabia to take part in the current fighting to free the independent and sovereign State of Kuwait following its annexation by Iraq. Commitment to the right to self-determination is also the basis of Senegal's policy on the Palestinian problem. The current chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People is from Senegal.

Article 2. The right to freedom from discrimination

10. Freedom from discrimination has to be considered from three standpoints - political, legislative and preventive.

The political aspect

11. When it acceded to international sovereignty, the Republic of Senegal immediately became aware of the danger which discrimination posed for a newborn State in the aftermath of colonization; the colonial Powers took no account of sociological considerations when they carved up the territories which were subsequently transformed into nations through a legal process. The authorities were quick to draw up a real policy for combating that danger for the new nation by means of legislative and preventive action.

The legislative aspect

12. The policy applied in the Constitution itself, which, in article 1, provides that "The Republic of Senegal shall be secular, democratic and social. It shall ensure equality before the law for all citizens, without distinction as to origin, race or religion. It shall respect every faith." Article 4 makes any act or propaganda of a discriminatory nature punishable by law. Pursuant to this text, Act 81-77 of 1 December 1981, amending the Penal Code and the Code of Criminal Procedure, adopted the definition of discrimination given in the International Convention on the Elimination of All Forms of Racial Discrimination and provided for heavy prison sentences and fines for anyone committing the offences mentioned in the text. A further text adopted in 1986 condemned discrimination in sport.

The preventive aspect

13. Attention should be drawn to Senegal's ratification of the International Convention on the Elimination of All Forms of Racial Discrimination, whereby it entered into a commitment with the international community to make all the necessary legislative, administrative and judicial arrangements:

(a) To give effect to the undertaking to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, act in conformity with this obligation;

(b) To give effect to the undertaking not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) To review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) To give effect to the undertaking to prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) To give effect to the undertaking to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division; and

(f) To adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnic groups, as well as to propagating the purposes and principles of the Charter of the United Nations in matters of racial discrimination.

14. These measures have been given substance in the establishment of the Université des mutants ("Career-changers' University") for Dialogue among Cultures in 1981 and of the Institute for Human Rights and Peace in 1983. Senegal has signed some 60 bilateral cultural conventions with many other countries. The Senegalese Human Rights Committee, founded over 20 years ago, monitors all measures taken in this matter by the public authorities.

15. It is apparent from the foregoing that Senegal is well aware of the danger of discrimination, especially in relation to race, where it may constitute a threat to any African State for reasons already mentioned apropos of colonization. Some humanitarian organizations have suggested that the unrest in southern Senegal is the result of racial or ethnic discrimination. They hold that, on account of their race or ethnic group, the people in the south of the country are ignored by the public authorities, which are interested only in the economic and social development of the north, west and centre of the country. These fanciful claims are groundless, since Senegal is a unitary State divided into 10 administrative regions and 30 departments, all with the same socio-economic infrastructure, whose activities are determined solely by the interests of the population groups concerned.

Article 3. The equality of all human beings

16. The equality of human beings is rooted in the Constitution and has three aspects. There is the equality of all citizens before the law, without distinction as to origin, race, sex or religion. This is laid down in article 4 of the Constitution, which applies only to Senegalese nationals with citizenship. The equality of all human beings before the law stems from article 7, paragraph 1, and reflects a broader approach to equality in so far as it covers all human beings living in the territory of the State of Senegal. Equality between men and women in the attribution and enjoyment of rights is laid down in article 7, paragraph 2, of the Constitution. Lastly article 7 stipulates that in the legal and social life of Senegal there shall be no social status or privilege based on place of birth, person or family. This constitutional provision is repeated in all legislation and regulations governing public and private life in Senegal.

Articles 4 and 5. Restrictions on and suspension of rights

17. In any State, public order may be disturbed by uncontrolled movements of persons, the people may be faced with a real and imminent danger or the security or integrity of the national territory may be threatened. In all such cases, it is the responsibility of the Government to take the appropriate steps to restore order, to avert the danger threatening the nation or to protect the security and integrity of the national territory.

18. Because such measures are apt to restrict or suspend basic human rights, articles 4 and 5 of the International Covenant on Civil and Political Rights impose important requirements on States Parties. For examples such measures must not be inconsistent with their other obligations under international law, nor must they involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. The other States Parties must be informed of such measures, and of the reasons for them, through the intermediary of the Secretary-General of the United Nations. Nothing in the Covenant may be interpreted as permitting acts aimed at the destruction or limitation of the rights and freedoms it recognizes. Lastly, there may be no restriction upon or derogation from recognized or existing rights on the pretext that the Covenant does not recognize such rights or that it recognizes them to a lesser extent.

19. To give effect to those provisions, Senegalese law-makers, recognizing the seriousness of such measures and their effects on human rights, have drafted a body of laws which take full account of the need to protect these rights and the necessity of maintaining or restoring public order. These make use of four mechanisms:

(i) The maintenance of order,

(ii) States of emergency and siege,

(iii) The requisitioning of persons and goods, and

(iv) Emergency powers under article 47 of the Constitution.

1. The maintenance and restoration of public order

(a) The maintenance or restoration of public order through the use of force

20. Law and order may be disrupted by a mob or assembly of armed or unarmed individuals, who threaten the peace. In such cases, the law requires the forces of law and order to restore order by such ways and means as they may decide. The law in question is Act 74-13 of 24 June 1974 amending article 92 of the Senegalese Penal Code, which defines what is to be understood by an armed or unarmed mob and specifies under what conditions the forces of law and order may use force to disperse such a mob. These conditions are exacting because action by the forces of law and order can impinge upon basic human rights such as freedom, physical integrity and life. They allow for two scenarios: in one, the forces of law and order use force to disperse a mob without warning, and in the other they disperse the mob after due warning, in the presence of a competent authority.

21. In the first case, the forces of law and order must be summoned to disperse a mob or instructed to enforce the law or execute a judgement or court warrant. They may use force when violence or assault is committed against them or any individual or when property is destroyed or damaged. They may also use force when they cannot otherwise defend the area they occupy or the positions they have been ordered to guard.

22. In the second case, where force is used after due warning has been given and in the presence of a competent authority, the law imposes several conditions on the forces of law and order:

(a) A competent authority must be present in the person of the governor, prefect, deputy prefect, mayor or one of his deputies, commissioner of police or other officer of the criminal investigation police wearing his badge of office;

(b) The competent authority must announce his presence by a warning sound or light which will effectively alert the individuals forming the mob;

(c) The competent authority must instruct the persons taking part in the mob to disperse, using a loud-hailer or a warning sound or light which will likewise effectively alert the individuals forming the mob;

(d) The authority must issue a second warning if the first goes unheeded.

23. The Senegalese courts have scrupulously upheld these very strict conditions, invalidating more than 50 police and gendarmerie reports during the events which occurred during the State of emergency following the elections between February and June 1988. They construe failure by the forces of law and order to respect the legal provisions described above as a serious breach of procedure which renders the use of force illegal and invalidates the procedure laid down for reporting it. As a result, the cases against all the individuals cited in the invalidated police and gendarmerie reports were simply dropped. This again shows the commitment of Senegalese public institutions to the fundamental principle of protecting human rights.

(b) The maintenance or restoration of law and order by force of arms

24. Before Act 74-13 of 24 June 1974, amending the section of the Penal Code on the use of force to maintain or restore law and order, Senegalese lawmakers, always anxious to ensure better protection of human rights, passed Act 70-37, of 13 October 1970, on the use of weapons and special barricades by the gendarmerie and police forces. Resort to arms is an especially serious step because it endangers individuals' lives and physical safety; it must therefore be regulated by the law, which alone can authorize an infringement of those basic human rights. Act 70-37 of 13 October 1970 lays down a number of stringent rules under which the gendarmerie and police forces may use their weapons in the absence of a judicial or administrative authority and outside a state of siege or emergency. They mean that if no period of emergency has been declared, judicial or administrative authority must be present before authorization to use weapons will be granted.

25. The Act provides for four situations under which, even in the absence of such authorities and when no state of emergency has been declared, the forces of law and order may use their weapons:

(a) If they are subjected to pronounced, serious or widerspread violence or assault or threatened by armed individuals;

(b) If they cannot otherwise defend the area they occupy the facilities they are assigned to protect, the posts or persons they are ordered to guard or if they encounter resistance so strong that it cannot be overcome except by force of arms;

(c) To secure the release of the authorities empowered to order the use of armed force, when those authorities are prevented from doing so by force;

(d) When individuals ordered to stop by means of loud, repeated cries of "Halt! Gendarmes" or "Halt! Police", as appropriate, attempt to escape and can only be constrained to stop by using weapons.

26. In Senegal, a State governed by the rule of law, the rules which govern the use of force and weapons to maintain or restore law and order are shaped by the principle that right must prevail. This explains the action of the forces of law and order in southern Senegal (Casamance), to return to that example. In Casamance, armed individuals would scour the forest and shoot at anyone they met on the pretext that they were winning sovereignty for the region, although the fact that it belongs to Senegal has never been challenged either before or after independence. There are problems with the demarcation of the border between the Republic of Senegal and the Republic of Guinea-Bissau which are now being considered by the competent international institutions. But that dispute only concerns the maritime border between the two countries and has never extended to any territorial claim. These armed gangs attack unarmed civilians as well as members of the forces of law and order in the region who, pursuant to the provisions indicated above, have occasion when the need arises to use their weapons under the conditions specified by law to defend themselves. Lastly, it must be pointed out that the forces of law and order never use their weapons for gratuitious killing, as some critics in international humanitarian organizations have suggested.

2. States of emergency and siege

27. States of emergency and siege are exceptional measures provided for in article 53 of the Constitution which may be imposed by authority of the President. Because of their serious implications for basic human rights, the Constitution places them under the control of the National Assembly and limits their duration to 12 days unless the National Assembly authorizes an extension. It states that the actual arrangements that will apply are to be determined by law. The relevant law is Act 69-29 of 29 April 1969, which sharply defines the limits on the power of the authorities to restrict human rights. Thus it provides that a state of emergency or a state of siege may be proclaimed in respect of all or part of the territory of Senegal. In 1988, a state of emergency was proclaimed throughout the country after the incidents that followed the elections. Another was proclaimed in April 1989 in the Dakar area alone, after the incidents between Senegal and Mauritania. In both cases, the National Assembly was convened or was already in session.

28. The Act states that any measures taken by the authorities must be necessary for the maintenance or restoration of public order. Hence the authorities may impose restrictions upon individual freedom of movement, but the Act provides for an advisory control commission to which any person affected by such a measure can apply to have the order rescinded. In such a

case, the administrative authorities have 15 days within which to make their decision known, failing which the measure is automatically annulled by the Commission.

3. Requisitioning of persons and goods

29. Requisitioning is used under the circumstances provided for by law to ensure that public services are not interrupted. It is regulated by Act 69-30 of 29 April 1969, and can apply to services and actual individuals required to meet the needs of the country. Requisitioning of persons is a serious encroachment on the right to strike, a basic right guaranteed by the Constitution; the refusal to respond to a requisition order is an offence punishable by imprisonment and a fine. The requisitioning of property implies the use or expropriation of any movable or immovable property, with the exception of the ownership of buildings whose transfer remains subject to the procedure for expropriation in the public interest. This too is provided for in Act 69-30 of 29 April 1969, which lays down several kinds of guarantees and safeguards the right to own property, another basic human right; these guarantees take the form of compensation for various losses due to requisitioning.

4. Emergency powers under article 47 of the Constitution

30. The powers referred to here are vested in the President, who, in the face of certain serious and imminent dangers to the nation, may impose them after taking certain precautions. They are very serious because they may represent very real threats to human rights, since all power (civilian and military) may for a time be concentrated in the hands of a single person. The Constitution therefore imposes very strict conditions on their application, and these in effect constitute guarantees for human rights. It should be pointed out that since independence no President has had to invoke this constitutional provision.

Article 6. The right to life

31. The right to life is expressly recognized in article 6 of the Constitution of Senegal which provides that the human being is sacred and it is the duty of the State to respect and protect the human being. This article means, on the one hand, that a person may be deprived of his life only under the conditions specified by the law and, on the other, that although the death penalty is legal it will likewise be carried out subject to the conditions provided by law. The death penalty still exists in Senegal. Nevertheless, it is imposed only for exceptionally grave offences, i.e. for violent crime.

32. The death penalty may only be imposed by a properly constituted court which existed before the crime was committed. It should be pointed out that since Senegal's independence, 30 years ago, only two death sentences have been carried out. This demonstrable fact should set to rest accusations by humanitarian organizations that Senegal commits extrajudicial executions. Moreover, the fact that Senegal has only carried out two death sentences in the 30 years of its existence as a sovereign State proves that genocide is not taking place there. Hence since 1983 Senegal has been a party to the Convention on the Prevention and Punishment of the Crime of Genocide.

33. The right to grant a pardon is vested by the Constitution in the President. He makes very wide use of this prerogative either to respond to individual appeals or to grant a general pardon the day after important events in the country, such as presidential elections or independence day. A pardon may be total or partial. Amnesty is a feature of the Senegalese legal system. Article 56 of the Constitution makes it a prerogative of the National Assembly, which may vote to pass an amnesty act. Since Senegal became independent there have been eight amnesty acts, the last of which was passed on 1 June 1988.

34. Minors enjoy special protection under Senegalese law. Article 52 of the Penal Code provides that if a minor incurs the death penalty, he shall be sentenced instead to imprisonment for 10 to 20 years. If a woman sentenced to death declares that she is pregnant, under article 16 of the Penal Code the sentence may not under any circumstances be carried out before she gives birth. The right to life is sacred in Senegal, for although the death penalty still exists it is more a deterrent than a punishment.

Article 7. The right of every human being to physical and moral integrity

35. The right to physical integrity is provided for by article 6, paragraph 3, of the Constitution of Senegal. Under this article of Senegalese law, as the Covenant requires, no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In fact, even acceding to the Convention against torture, Senegal had already made provision to safeguard the physical integrity of anyone living in its territory and afford protection against any act of torture or cruel or inhuman treatment. In the matter of cases where a person's physical integrity may be endangered, the law allows for two possibilities: police custody and pre-trial detention.

36. Police custody. It should be recalled that because Senegal is governed by the rule of law, an arrest, which consists of apprehending an individual in the name of the law and bringing him to justice, may be made only by an authority legally empowered to do so. No one other than a member of the criminal investigation police or a judge may order the arrest of an individual; otherwise the arrest is arbitrary and therefore against the law. Police custody is a serious curtailment of a person's freedom of movement and can only be ordered by a criminal investigation officer. The Act establishing the Code of Criminal Procedure contains detailed regulations on grounds for such custody, the conduct of the criminal investigation officer towards the person held in custody and the government procurator's office, and the circumstances in which custody may be effected.

37. Criminal investigation officers are liable to three types of sanctions: professional, disciplinary or penal.

Professional sanction: This consists in the cancellation of the report on an investigation when it is not drawn up in conformity with the regulations: where, for example, the requisite references in the report and the signature of the person being held are missing. This type of sanction, which seriously undermines an officer's credibility, has been imposed several times in recent years in important cases: the investigation reports were cancelled and the suspects released. Three reports submitted to the State Security Court and

four others submitted to the ordinary courts have been cancelled. This sanction is available under article 57 of the Code of Criminal Procedure, and the courts do not hesitate to apply it when a party seeks annulment of a report.

Disciplinary sanction: This is also provided for in the Code of Criminal Procedure (art. 59). The Indictment Division of the Court of Appeal is called upon to rule whether or not an official under investigation in connection with a police custody case should be allowed to remain a member of the criminal investigation police. This sanction has been imposed on two criminal investigation officers in recent years for misconduct in connection with police custody.

Penal sanction: This again is provided for in the Code of Criminal Procedure (art. 59). Criminal proceedings are taken out against a criminal investigation officer guilty of misconduct, i.e. torture or ill-treatment of persons held in police custody.

38. This has been the subject of some criticism by international humanitarian organizations which accuse the Senegalese forces of law and order of indulging in such acts against persons under arrest and in custody. They also complain of the absence of any investigation to determine the circumstances of such acts. Senegal rejects such accusations. It can be proud of the fact that even before becoming public, a number of such acts by criminal investigation officers have in recent years been investigated and led to legal proceedings:

(i) The Baba Ndiaye case, which led to the conviction of seven police officers with consequences that do not need repeating;

(ii) The case against the Commissioner of Police of Pikine for wilfully striking and wounding a person in custody (under way);

(iii) The case against the Commissioner of Police of Bel-Air for ill-treatment of a person in custody (examination proceedings under way);

(iv) The case against gendarmes from the Dakar-Ville brigade for fatally striking a person, following a complaint by the wife of the deceased (examination proceedings under way);

(v) The case against policemen from the Tivaouane police station for ill-treating and wilfully striking and wounding a person in custody.

39. Even in cases involving the so-called "Casamançais separatists", investigations and prosecutions have been initiated against police officers:

(i) The deaths of Sana Coly, Boto Diedhiou and Chérif Coly in the office of the examining magistrate in Ziguinchor;

(ii) The deaths of Alassane Dieme and Jean-Pascal Badji in the court at Ziguinchor;

(iii) The deaths of Jean-Marie Sagna, Kaoussou Tamba, Souleymane Goudiaby, Ganguilo Djibalene, Albert Diatta and Louis Diatta (investigations under way at Ziguinchor).

40. Lastly, to conclude this issue, it should be pointed out that Senegal has no facilities in which such medical or scientific experiments may be carried out.

Article 8. Forced labour, the traffic in persons and slavery

41. Slavery and traffic in human beings are unknown in Senegal. Having acceded to the various international instruments on these questions, however, the Senegalese authorities have drawn up appropriate legislation to prevent and punish the introduction of such practices into Senegal. Articles 334 to 337 bis of the Penal Code punish acts intended to maintain a person in a state of captivity, whatever the reason. As far as forced labour is concerned, article 3 of the Labour Code defines it as "any labour or service demanded of an individual under the threat of any penalty and for which such individual has not volunteered of his own free will". Forced labour is prohibited by the Code, article 249 of which prescribes prison sentences and fines for anyone who obliges an individual to perform forced labour. On the other hand, Senegalese law does allow for compulsory labour under the Code of Criminal Procedure (art. 692), which restricts it to persons sentenced to forced labour. This type of labour is not "forced" in so far as those compelled to perform it receive a small sum on completion of their sentence. Lastly, under Senegalese law compulsory military service, civil service performed in youth camps and aid and assistance rendered in connection with catastrophes are not considered to be compulsory labour.

Articles 9 and 10. The right to liberty and security of person

42. The right to liberty and security of person is enshrined in the Senegalese Constitution. The Penal Code classifies infringement of this right as a criminal abuse of office when committed by a public official and as a serious offence when committed by an ordinary citizen. It should be recalled that the right may be infringed by only two categories of individual, criminal investigation officers and judges, and the law lays down precise obligations for both when they have to do so. These include immediately informing the person arrested or detained of the grounds for infringing his rights. In addition, Senegalese lawmakers set great store by the right to stand trial before a competent court within a reasonable period. Accordingly, since 1985 they have extended the scope of application of flagrante delicto procedure and introduced measures to restrict the use of deferrals as a delaying tactic.

43. The Senegalese Code of Criminal Procedure contains a multitude of measures designed to limit as far as possible infringements of individual freedom and security: an illustration of this is article 127, pursuant to which if the penalty is two years' prison or less, an accused person officially domiciled in Senegal may not be held in pre-trail detention for more than five days, and if his usual place of residence is within the jurisdiction of the court, he may not be detained at all. A further example is the six-month limit set for a detention warrant issued by an examining

magistrate; the period may be renewed by a substantiated order from the magistrate, and appealed before the Indictment Division, which may annul the warrant if detention is no longer justified.

44. Senegalese legislation also provides for bail, which may be either personal or in rem. Bail is set by the judge and must be posted before release. The purpose of bail is to ensure the appearance of the suspect or accused. Since 1985, the Code of Criminal Procedure has provided for judicial supervision as a substitute for pre-trial detention. Under judicial supervision, the accused is required to present himself regularly to the examining magistrate or to an official appointed by the magistrate for the purpose, and to sign a register. Senegalese criminal law recognizes the right of all parties to a trial to appeal against all decisions by the examining magistrate or the court. If the decision is without appeal, it is also possible to apply to the Supreme Court for judicial review.

45. Any arbitrary detention of an individual in breach of the law renders the public official responsible liable to the penalties provided for by articles 106 to 113 of the Penal Code and to payment of damages and interest. Persons deprived of their freedom of movement after conviction are held in special places of detention whose internal regime is strictly regulated. In accordance with article 698 of the Code of Criminal Procedure and decree 66-1081 of 31 December 1966 establishing the penal regime in Senegal, detainees are treated humanely in order to ensure they mend their ways and return to their places within society. It should be added that in detention centres, persons awaiting trial are kept separate from convicted prisoners. Minors and women are held in special sections.

Article 11. Prison in civil cases

46. Imprisonment on the grounds of inability to fulfil a contractual obligation is unknown in Senegalese law. The obligation may be enforced by attachment or execution against the property of the individual concerned (arts. 194, 195 and 200 of the Code of Civil and Commercial Obligations). The right to freedom and security of the person receives special attention in Senegal on account of the devotion of the Senegalese people to it.

Article 12. The right to liberty of movement

47. Article 11 of the Constitution recognizes the right of all Senegalese citizens to freedom of movement and free choice of residence in any part of the country; this right may only be restricted by law and no one may be placed under protective measures except as provided for by law. Between 1965 and 1980, Senegalese citizens required an exit visa in order to leave the country. Since 1990, however, all such legal restrictions have been lifted. No Senegalese citizen abroad may be deprived of the right to return to his country.

Article 13. The rights of refugees in Senegal

48. The Republic of Senegal is a party to the Convention relating to the Status of Refugees and allows into its territory any foreigner who applies for refugee status or arrives at its frontiers. In accordance with the

Convention, Act 68-27 of 24 July 1968 concerning the status of refugees provides for a number of measures benefiting refugees: persons holding refugee status may be expelled from Senegal only on grounds of national security or public order, and more particularly if they interfere in national politics, engage in activities contrary to public order or are given a custodial sentence for acts classed as especially serious crimes or offences (art. 4, para. I). Refugees facing an expulsion order are entitled to have their cases reviewed by the Commission on Admissibility and to be allowed reasonable time to seek another country of asylum. Furthermore, they may not be expelled during the period allowed for appeal on grounds of abuse of authority or in the event of an appeal before completion of the procedure. These rights also extend to persons who have been refused refugee status.

Article 14. The right to procedural guarantees

49. The right to the procedural guarantees provided for in this article of the Covenant is a principle recognized by Senegal's Constitution and legislation. Suffice it to recall article 7 of the Constitution, which declares the equality of all human beings before the law, and article 81, which makes the judiciary the custodian of the rights and freedoms defined by the Constitution.

50. Access to the courts is available without distinction or discrimination to all persons living in Senegal who consider that their rights have been infringed. This right is recognized by all general procedural legislation in the civil, social, administrative and family fields as well as the criminal law.

51. As a rule all hearings are public. A hearing in camera may be ordered if a public procedure would pose a threat to public order and morality, but judgement is always pronounced in public hearing, even when the accused is a juvenile.

52. The presumption of innocence is established by article 6, paragraph 4, of the Constitution and taken up in article 101, paragraphs 1 to 4, of the Code of Criminal Procedure; any individual subject to criminal prosecution automatically benefits from this presumption until found guilty.

53. Furthermore, Senegalese legislation entitles all persons suspected or accused of an offence to a number of procedural guarantees, as the Covenant requires. These are discussed below.

(a) The right to be informed of the grounds for the charge

54. As mentioned above, any criminal investigation officer who decides to hold a person in custody under article 55, paragraph 2, of the Code of Criminal Procedure is obliged to inform the person of the grounds for his action. Failure to do so is punishable under article 57, paragraph 2, of the Code. Examining magistrates to whom a case is referred are also required to inform suspects of the charges against them under article 101, paragraph 1, of the Code of Criminal Procedure. The same obligation applies to examining magistrates issuing specific warrants that may infringe the freedom of the person prosecuted (arts. 115, 116 and 118). The right to information is also

guaranteed before trial jurisdictions such as the Correctional Court, whose President is required to give notice of the preventive imprisonment consequent upon a committal order, and the Assize Court, whose President is obliged to inform the accused of the contents of the committal order.

(b) The right to be assisted by an interpreter

55. If the accused does not speak the language of the court, various provisions of Senegalese legislation guarantee him the right to be assisted by an interpreter:

(i) Article 92, paragraphs 2 and 5, of the Code of Criminal Procedure, in respect of the examination stage before the examining magistrate;

(ii) Article 255, paragraphs 1 and 4, in respect of accused persons before the Assize Court and witnesses who do not speak the official language of the court;

(iii) Article 336 of the Code, in respect of accused persons and witnesses who are deaf and dumb and unable to write;

(iv) Article 393 of the Code, in respect of accused persons before the Correctional Court.

It should be stressed that the right of both the accused or suspect and of the public prosecutor to object to an interpreter is recognized by law.

(c) The right to adequate time to prepare one's defence

56. This is the corollary of the right to defence laid down in article 6, paragraph 2, of the Constitution. At the preliminary investigation stage, article 56 of the Code of Criminal Procedure allows persons held in custody to be assisted by counsel in order to obtain the medical examination required by law. Article 101, paragraphs 3 and 4, requires the examining magistrate to inform the accused of his right to choose counsel from among the lawyers on the bar association roll. Lastly, article 384 of the Code of Criminal Procedure requires that in flagrante delicto procedure, the president of the court must inform the accused of his right to a period of three days to prepare his defence, which he must be allowed if he so requests. The same applies to the other ordinary criminal jurisdictions.

(d) The right to be tried without unreasonable delay

57. In Senegal this is an overriding legal requirement of the examination and trial jurisdictions. Accordingly, article 63, paragraph 3, as amended, of the Code of Criminal Procedure allows flagrante delicto procedure to be employed if the facts are patent and uncontested by the accused. Articles 381 to 385 of the Code stipulate that if flagrante delicto procedure is to be followed and there is no hearing that day, the court may be specially convened to try the case. Lastly, article 389 prohibits a court from deferring consideration of a case more than three times without a hearing if the case file is complete.

(e) The right to be tried in one's presence and to defend oneself or be defended, if necessary without payment

58. This is a fundamental requirement of Senegalese criminal procedure. A criminal trial pits society as a whole, represented by the public prosecutor, against an individual whose behaviour disturbs the social order. For this reason, the law requires the individual to be physically present before his judges to answer for his acts. It stipulates that he must be served by a marshal with a special summons, which he must sign for. The court receives a copy of the signed receipt from the marshal, and draws the appropriate conclusions if the accused fails to present himself. Access to the case file for the defendant's counsel at all stages of the procedure offers a further guarantee of the accused's presence in court.

59. The right of any person brought before the courts to defend himself or to be defended, if necessary without payment, is recognized by law. If the accused has no counsel when he appears before the examining magistrate, the magistrate appoints one ex officio. The same applies before the trial courts (ordinary courts, Assize Court). Lastly, Senegal has a legal aid system which was set up by a decree adopted as long ago as 1911, but is still in force; it entitles any person facing trial who is certified as living in poverty to exemption from all judicial expenses from the beginning of the procedure until enforcement of the judgement.

(f) The right to examine, or have examined, witnesses of one's choice

60. This is a corollary of the right to defence. A witness is any person who, under oath sworn before the court, is required to relate to the court facts he has seen personally or of which he has heard. A witness is an important figure at a trial, and is therefore legally obliged to appear if summoned, and to speak the truth, the whole truth and nothing but the truth; if he fails to do so, he is liable to prosecution for perjury. Articles 263, 295, 424, 429 and 440 of the Code of Criminal Procedure allow the accused, the parties to any suit for criminal indemnification (action civile) and the public prosecutor to call before the court prosecution and defence witnesses of their choice.

(g) The right not to be compelled to testify against oneself

61. This derives from the right not to be compelled to accuse oneself. Accordingly, under Senegalese law, article 94 of the Code of Criminal Procedure allows any person against whom an information is laid to refuse to give evidence as a witness; in this case, the examining magistrate may only take his evidence as a defendant. In addition, article 310 of the Code stipulates that before the Assize Court the President shall question the accused and take his statements. He is duty-bound not to express his opinion as to the accused's guilt.

(h) The right to special treatment of juvenile persons facing prosecution

62. As has already been observed, this right is recognized and guaranteed by Senegalese law. The reason for this is the legislator's belief that it is necessary to give minors, who are easily influenced, an opportunity to reform,

and avoid subjecting them to custodial sentences where contact with hardened criminals might influence their behaviour. Accordingly, juveniles are entitled to special treatment at various stages of criminal proceedings: (i) during police custody, juveniles must be kept in special, separate premises, and (ii) in the trial court (a juvenile court or Assize Court) youth is admitted as a mitigating circumstance resulting in commutation of the death penalty to a prison sentence of 10 to 20 years, and a sentence of hard labour, to a maximum of two years' imprisonment.

63. Articles 565 to 588 of the Code of Criminal Procedure set forth the procedure applicable to delinquent minors and minors at risk, who may be brought only before juvenile courts with their own structure and mode of operation. A judicial information must be laid before the examining magistrate for minors, who must in all cases notify the parents or guardian of the minor being prosecuted. The examining magistrate may place the minor being prosecuted in detention only by means of a special decision which must include the reasons therefor; in such a case the minor is detained in special premises. The examining magistrate for minors is empowered to entrust the minor to the custody of his parents, his guardian or a trustworthy person or to place him in a specialized institution. Juvenile courts have the same powers.

(i) The right to have one's conviction reviewed by a higher tribunal

64. Together with the unrestricted use of judicial remedies in criminal proceedings, this aspect of the right to defence is guaranteed by Senegalese legislation. Any conviction handed down by a court may be appealed before the Court of Appeal. Article 484 of the Code of Criminal Procedure confers this right on the accused, the parties to any suit for criminal indemnification (action civile), persons liable under civil law, and the public prosecutor. When any conviction is handed down by an Assize Court, its president must notify the accused of his right to lodge an appeal within three days (art. 344 of the Code of Criminal Procedure). Appeal to the Supreme Court is provided for by articles 556, 559 and 563 of the Code of Criminal Procedure, and article 3 of Ordinance 60-17 of 3 September 1960 sets forth the Supreme Court's assigned jurisdiction.

(j) The right to compensation by means of damages in the event of arbitrary or illegal detention

65. Article 365 of the Code of Criminal Procedure provides that in the event of an acquittal, the Assize Court shall rule upon any application for damages lodged by the accused against the parties to any action civile. Article 459 allows the criminal Correctional Court the same possibility when it dismisses charges against an accused person. Article 97 of Ordinance 60-17 of 3 September 1960, concerning the Supreme Court, provides that the decision resulting from an appeal from which it emerges that a convicted person is innocent may, on the application, award damages for the injury he has suffered as a result of his conviction or arbitrary detention; the damages thus awarded are paid out of the State budget as criminal court costs.

(k) The right not to be prosecuted or punished after having been acquitted or if a criminal charge is not proceeded with

Article 6 of the Code of Criminal Procedure states that res judicata constitutes a ground for the abatement of the public right of action. When a decision to acquit or not to proceed against a person becomes final, it acquires absolute force and no court may reverse it between the same parties on the same grounds. Article 342 of the Code provides that no one who has been legally acquitted may again be accused of the same acts, even under a different classification. Article 457, paragraph 1, establishes the same rule when a court merely decides not to proceed against a person, without penalty or costs.

Article 15. The legal status of offences and penalties

67. An offence results from behaviour by an individual, either an act or an omission, which is provided for and punished by law. On this foundation rests the legal status of penalties and offences set forth in the Constitution of Senegal, article 6 of which provides, inter alia, that no one may be convicted of an offence except by virtue of a law in force before the commission of the act in question. This principle is incorporated in article 4 of the Penal Code, which provides that no offence may be punished by a law that entered into force after the act was committed. Articles 6, 7, 8 and 9 of the same Code list the scale of penalties, which are:

(a) For more serious offences:

(i) forced labour for life;

(ii) forced labour for a specified period;

(iii) penal detention; and

(iv) civic dishonour.

(b) For less serious offences:

(i) imprisonment for a specified period in a place of detention;

(ii) suspension of certain civic, civil or family rights for a specified period; and

(iii) a fine.

Senegalese legislation recognizes the principle of the immediate application by the courts of more lenient procedural laws in criminal matters. However, this principle has no effect on the determination of the facts.

Article 16. The right to recognition as a person before the law

68. To be a person before the law, or legal personality, is the very basis of human rights, since it is the starting point for determining whether an individual does or does not have rights and whether he may exercise them.

Accordingly, the Constitution of Senegal recognizes, in article 6, paragraph 3, the right of everyone to the free development of his personality provided he does not violate the rights of others or infringe the rule of law. Article 1 of the Senegalese Family Code states that legal personality begins at birth and ends at death. However, it also recognizes that legal personality may date back to the date of conception, which it irrefragably fixes between the 180th and 300th day preceding birth.

69. The constituent elements of this legal personality are defined by the Family Code, which also determines how they are to be protected. These elements are:

(a) The surname, which serves to identify the individual and is attributed as established by the law, which also protects it.

(b) The right to honour and reputation, another corollary of an individual's legal personality, violation of which constitutes either injurious behaviour, false accusation or defamation, which are punishable offences under the Penal Code.

(c) The right to physical integrity, which is another consequence of an individual's legal personality; any violation of it is, as has been seen above, punishable under the Penal Code.

Article 17. The right to a private life and privacy

70. The right to a private life and privacy is taken to mean an individual's right to lead the kind of life that he wishes to in an inviolable domicile and with means of communicating with other persons that are guaranteed and protected by law. All these rights are recognized and guaranteed by Senegalese legislation as basic human rights that have to be protected. Article 13 of the Constitution states that the domicile shall be inviolable. The concept of domicile is defined in article 12 of the Family Code as a person's principal place of residence. It is left to article 164 of the Penal Code to protect, by means of heavy penalties, a person's domicile against any violation, whether by an individual or by an agent of the State.

71. The right to privacy is also acknowledged by the Constitution in the right to free development of one's personality in absolute respect for the rule of law: hence an individual is free to adopt his own way of life without anyone else being able to impose one on him. Privacy of correspondence is also guaranteed by the Constitution, whether it be by post, by telegraph or by telephone. Restrictions on this right may be ordered only in pursuance of a law. Article 167 of the Penal Code provides for prison sentences and fines for violations of the right to privacy of correspondence.

Article 18. The right to freedom of thought, conscience and religion

72. This right is also of constitutional rank: article 19 of the Constitution expressly guarantees it. Articles 230, 231, 232, 233 and 233 bis of the Senegalese Penal Code provide very effective protection of the right to freedom of thought, conscience and religion by means of prison sentences and fines. The Constitution, in article 15, recognizes that parents have the

natural right and duty to bring up their children and ensure their moral education with, of course, the support of the State and the community. Article 19, paragraph 2, of the Constitution states that religious institutions and communities shall have the right to develop without hindrance, that they shall be exempt from State supervision and shall regulate their affairs independently. As can be seen, this right has been given particular attention in Senegalese legislation.

Article 19. The right to freedom of opinion and expression

73. Senegal is a country with a long-standing democratic tradition. Historically, even under colonial domination, it has never experienced obstacles to freedom of opinion and expression. During the short period when it had a one-party system (1964-1974), freedom of opinion and expression remained intact for all citizens of the country. This democratic tradition is affirmed in articles 3 and 8 of the Constitution. Article 3 deals with suffrage and elections, which are contested by political parties whose formation in Senegal is unrestricted. As proof of this, there are at present some 20 parties on the Senegalese political scene. Article 8 affirms the right of everyone to express and disseminate his opinions freely in oral, written or pictorial form. These rights are subject to the limitations imposed by laws and regulations and by respect for the good name of others.

74. In pursuance of these constitutional principles, the amended Press and Journalism Act (Act 79-44 of 11 April 1979) constitutes a real code of professional ethics in matters of freedom of opinion and expression. Articles 44, 49, 50, 51, 52, 53 and 86 define the profession of journalism and the obligations under which journalists must work: objectivity, impartiality, honesty, dignity, respect for the beliefs of others and for the principle of non-discrimination with regard to race, ethnic group or origin, and professional secrecy. Violations are punishable under articles 43 and 86 of the Act and under articles 248-272 of the Penal Code, which lay down very severe prison sentences and fines.

75. Freedom of opinion and expression in general has other consequences as well, such as the existence of an information organ for each political party and access for political parties to the State media, where they can present anything they consider to be in the interests of the Senegalese people.

Article 20. Advocacy of, and propaganda for, hatred or war

76. In the preamble to its Constitution, the Republic of Senegal proclaims its attachment to the fundamental human rights set forth in the 1789 Declaration of the Rights of Man and of Citizens and the Universal Declaration of Human Rights. The ultimate aims of these ideals and rights are to promote and maintain peace around the world and among peoples. In article 6 of the Constitution, the Senegalese State and people recognize the existence of these rights as the basis of every human community and of peace and justice in the world. Since its accession to national sovereignty Senegal has suffered the consequences of wars of national liberation on its frontiers, but it has never sought to fuel hatred against any other people or to promote any kind of war propaganda.

77. The maintenance of peace at home and throughout the world constitutes the basis of all Senegalese policy in national and international affairs. At the national level this resolve has found its primary expression in the Constitution, which, in article 59, makes the declaration of war a prerogative of the National Assembly. Again in the endeavour to preserve peace, Senegal's Penal Code establishes severe penalties, including capital punishment, for anyone who attempts to incite people to war, to raise armed troops, to supply weapons or ammunition, or to provoke civil war by arming citizens (arts. 66, 75, 78, 79, 85, 86 and 87). As a contribution to the promotion of world peace, Senegal has since 1970 had a Human Rights Committee responsible for publicizing the provisions of the Universal Declaration of Human Rights. Even more recently, in 1983 the Government established an Institute for Human Rights and Peace at the University of Dakar; covering the African continent, this Institute is responsible for teaching human rights through initial and further training, research, documentation and the organization of symposiums and seminars. At the international level, the Senegalese authorities have shown their commitment not only on the diplomatic scene but also to a very significant extent in various peace-keeping operations: those in Lebanon and Zaire, to mention but two.

Article 21. The right of peaceful assembly

78. The right of peaceful assembly is the corollary of freedom of association, which article 9 of the Constitution confers on all Senegalese citizens. In accordance with this constitutional principle, the legislature, by Act 78-02 of 29 January 1978, proceeded to regulate assemblies in Senegal. The Act makes a distinction between private meetings, for which it lays down criteria and conditions, and public meetings, which are unrestricted. It also sets forth the prerogatives of the administrative authorities with regard to these two categories of meetings, including the power to prohibit them provided that the decision to do so states the reasons therefor (arts. 2, 3, 9, 10, 11 and 14). The Penal Code supplements these provisions by laying down severe penalties for the organizers of meetings which do not conform to the law (art. 100).

Article 22. The right to freedom of association and the right to form and join trade unions

79. The right to freedom of association is a corollary of any democracy, and is duly recognized by the Constitution in article 9 in the principle of freedom of association. Specific laws distinguish between and govern the various types of civil, sporting, artistic, cultural, professional and political associations. However, all associations have a common legal basis in the Code of Civil and Commercial Obligations, which all the specific texts cite in reference to their constitution. Articles 813, 814 to 817 and 821 of the Code of Civil and Commercial Obligations lay down the basic substantive and procedural requirements for the constitution of associations in general, the rights and obligations of their members, the conditions and grounds for their dissolution, and the sanctions that may apply.

80. The Penal Code and Act 65-40 of 22 May 1965 concerning seditious associations set out the offences which may be committed by associations and the penalties for them, because the Constitution itself states that the

freedom to establish associations may be restricted only by law. It accepts that in a democratic society like Senegal, such restrictions are acceptable only if they are in the interests of national security, public security, public order or the protection of health, public morality or the rights and freedoms of others. It is for this reason that the second paragraph of article 9 states that groups whose purpose or activity is contrary to the criminal laws or at variance with public order are prohibited.

81. The Constitution recognizes the role of political parties in promoting the expression of the popular will through elections and stipulates that the conditions under which they are formed or dissolved shall be laid down by law. The relevant law is Act 81-17 of 6 May 1981, concerning political parties, which in article 1 provides that political parties shall necessarily be constituted in the form of Senegalese associations, in accordance with the provisions of articles 812 to 814 of the Code of Civil and Commercial Obligations. Article 2 specifies the other obligations to which political parties are subject.

82. Trade union freedom has existed in Senegal since the colonial period and is now enshrined in article 20, paragraph 2, of the Constitution, which provides that a worker may join a trade union and defend his rights through trade union activity. The formation proper of trade unions is governed by the provisions of Act 61-34 of 15 June 1961, containing the Labour Code, which also endorses the principle of trade union freedom. Articles 1 to 28 of this text lay down the substantive and procedural requirements for the formation of trade unions, their legal personality, what is meant by trade union freedom and trade union federations, and how trade unions can be dissolved and the consequences. At the present time Senegal has an impressive number of trade unions in the labour field, entirely in keeping with the ILO Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize, ratified by Senegal.

Article 23. Family rights

83. The Republic of Senegal regards the family as the basic unit of the national community and the very basis of human society. Article 14 of the Constitution states that marriage and the family constitute the natural and moral basis of the human community and places them under the protection of the State which, with the public authorities, has a duty to society to watch over the physical and moral well-being of the family. With the inviolability of the family sanctioned by the Constitution, the desire to protect marriage and the family has been manifested in a number of legal texts. Senegal is one of the first States emerging from the French colonial period which has drawn up a Family Code governing the law as it relates to individuals in all their diversity, i.e. from the conception of the infant until death. The Family Code determines the substance and form of marriage, which it defines as the solemn union of a man and a woman, based on a number of principles including:

(a) The right of a man or a woman to marry and found a family, formally recognized in article 100 of the Code;

(b) The age limit for marriage is 16 years for a woman and 20 for a man;

(c) The Code requires the personal appearance of the future spouses before the registrar to give their consent to the marriage even in the case of minors (arts. 108, 115, 116, 122, 123, 126 and 127).

84. The Family Code stresses the equality of spouses before the law and in their responsibilities after marriage. Both rights and obligations are laid down in the Code itself, and consist principally in:

(a) Mutual support and assistance between spouses (art. 151);

(b) Mutual respect and affection between spouses (art. 151);

(c) Mutual duty of fidelity between spouses (art. 150);

(d) Reciprocal representation of the spouse vis-a-vis third parties;

(e) Mutual contribution to household expenses which devolves mainly on the husband, while the wife contributes by her presence in the home.

These mutual rights and obligations are created upon the celebration of the marriage, whatever form the spouses choose, and are enforceable through the Code in the form of mandatory execution if the obligation is financial, or divorce if the fault in question is among the grounds for divorce.

85. Divorce, or dissolution of the matrimonial bond, is part of the rights of the spouses and since the introduction of the Family Code Senegalese law in this regard has been very liberal, unlike the earlier Civil Code which was very restrictive. The Family Code makes provision for two types of divorce - divorce by mutual consent and contested divorce:

(a) Divorce by mutual consent depends on the wishes of the spouses themselves who prepare the procedure; the magistrate's only function is to take note of this unequivocal desire to put an end to the union;

(b) Contested divorce is for a magistrate to grant or refuse; the spouses must apply for it, invoking one of the 10 legal grounds set forth in article 166 of the Code and submitting evidence in support of the allegations.

Whatever the form of divorce, the effect of procedure on what happens to the children is a particular matter of concern to the magistrate. In divorce by mutual consent, the situation of the children of the marriage is one of the elements in the agreement between the spouses; the magistrate must verify their agreement on that point and ensure that it does not harm the interests of the children; if it does, he may reject the application. In the case of contested divorce, it devolves on the magistrate to assign custody of the children; for that purpose he always obtains the opinions of social workers who are required to present him with a report setting out the consequences of the custody decision. The magistrate decides only in the interests of the children, particularly as regards their health, their safety and their morals. He may also fix the amount of alimony when custody of the children is granted to the wife.

Article 24. The basic rights of the child

86. Children enjoy pride of place in Senegalese law, beginning with the Constitution. The Constitution makes it incumbent on the State to protect young people against moral and social dangers and on families to bring them up. In the implementation of these constitutional requirements, numerous legal texts on the organization of life in society deal with the situation of the child. The Family Code states that legal personality begins at birth if the child is born alive and viable, but may extend back to the date of conception if the child's interests so require (art. 1). The same text gives parents a mandatory period of 30 days to declare the child to the registrar, when he is given a surname and one or more first names and the first names and surnames of his parents are registered. This declaration has important consequences in the relations between the child and his legitimate or natural family; among other things, the family is obliged to bring the child up, educate him and maintain him in order to make of him an individual capable of living becomingly in the society he is called on to serve. This obligation is thus the corollary of parental authority which, for parents, means the right of custody, the right of chastisement and the legal right to administer the child's assets. All these rights are regulated in detail by the Family Code in articles 300 et seq.

87. With regard to the right of all children to acquire a nationality, it must above all be accepted that nationality is an individual's bond of allegiance, both political and legal, to a particular State. When a child is born in the territory of a State, international public order requires that he should be connected a priori with that State; he is free to change his nationality when he comes of age. Senegalese nationality law is based on two concepts, birth on Senegalese soil (jus soli) and birth to an ascendant in the first degree who was himself born in Senegal. This gives the Nationality Code a very broad coverage from which any child born on Senegalese territory may benefit. Article 3 of Act 61-10 of 7 March 1961 gives Senegalese nationality to any child newly born of unknown parentage in Senegal. The child shall, however, cease to be a Senegalese national if, during his minority, his affiliation is established to an alien and, under the latter's national law, he possesses the nationality of the alien. This means that otherwise the child retains his Senegalese nationality. Articles 5 to 10 of this Act deal with the Senegalese nationality of legitimate, natural and adopted children. In all these cases, the principle is to protect the child by giving him Senegalese nationality. Article 15 deals with the conditions whereby a minor may acquire Senegalese nationality: the minor can apply on reaching the age of 18. This age was increased to 25 in 1989. Article 16 concerns the conditions under which a person may be stripped of Senegalese nationality: only on the basis of a decision for which the supporting arguments are disclosed, on grounds serious enough to render the individual concerned unworthy of citizenship.

Article 25. The right to take part in the conduct of public affairs and to have access, on terms of equality, to public service

88. The Republic of Senegal's long tradition of democracy has meant that the right to elect and to be elected has its roots far back in the country's past. Several provisions of the Constitution are devoted to guaranteeing and

protecting this right. Article 2 provides that national sovereignty shall be vested in the Senegalese people; that suffrage may be direct or indirect but always universal and secret; that all Senegalese nationals of either sex, of full age and in possession of their civil and political rights shall be eligible to vote under the conditions laid down by law. It will be recalled that the expression of the popular will through elections is the domain of the political parties, which may be set up without restriction to promote political programmes selected in the same circumstances. Act 76-96 of 21 August 1976, as amended, containing the Electoral Code, lays down the conditions to be fulfilled in order to vote or to be elected, in conformity with the Constitution. Lastly, articles 103 to 105 of the Penal Code provide for very severe sanctions against anyone who attempts to impair the fairness of a ballot in the various elections.

89. The Presidency of Senegal and membership of the National Assembly are elected positions. The form of election, eligibility for election and incompatibility with other activities are determined by the Constitution, supplemented by special laws. No detail is left to chance in these elections: everything is regulated and everything may be challenged before the Senegalese courts which, in the event of irregularities, do not hesitate to annul the ballot. Access to public office in Senegal may be regarded as a corollary of citizens' equal rights and obligations vis-à-vis the State, which are guaranteed by the Constitution itself. Act 61-33 of 15 June 1961 concerning the Civil Service Regulations sets out, in articles 3, 4, 8 and 20, the conditions which must be fulfilled for access to the various civil service posts; they concern equality of appointment between the sexes, and stipulations as to nationality, morals, physical fitness and age. This means that in Senegal there is no bar to the right of access to any civil service post.

Article 26. Equality before the law for all citizens and equal protection of the law

90. The equality of all citizens before the law is enshrined in articles 1 and 7 of the Constitution; article 4 condemns any act of racial, ethnic or religious discrimination. Several articles of the Penal Code define what is meant by racial, ethnic or religious discrimination and order severe punishment for those who commit offences discriminatory in nature (arts. 283 bis, 256 bis, 257 bis, 258, 261, 262, 281, 295, 296 and 166 bis).

91. The same principle of equality is defined and guaranteed in the legislation governing the organization of the courts in Senegal. The various texts recognize the equality of everyone before the courts, from courts of first instance up to the Supreme Court. The Penal Code, in article 165, makes it an offence punishable by a fine for any judge or court to refuse to render justice, whatever grounds may be invoked. In applying the law, the Senegalese courts take no account of considerations based on race, colour, sex, religion, political opinion, social or national origin, fortune, birth or any other situation.

Article 27. The rights of minorities

92. The question of the rights of persons belonging to an ethnic, religious or linguistic minority has always created problems within the United Nations system and has had a long history. Although the problem does not arise in Senegal, it would be timely to consider the topic from a historical point of view, the better to appreciate it and also to provide some evidence that it has nothing to do with the situation in south Senegal with which some unfortunately confuse it. When, in 1948, the Third Committee of the United Nations General Assembly was preparing the final text of the Universal Declaration of Human Rights in Paris, a number of delegations expressed the wish that it should include not only an article on non-discrimination, but provisions to ensure the protection of minorities. Some representatives pointed out that the problem of minorities was very complicated because of different State structures; they argued that some countries might not be in a position to accept provisions on minorities in a declaration of universal scope, since, in attempting to apply them, they would risk seeing their national unity founder. Others deemed it impossible, in a single article, to arrive at a compromise between the views of the American continent, where the assimilation of immigrants was generally desired, and those of the European continent with its racial and national minorities. Furthermore, it was pointed out that the rights of minorities were already fully protected in the draft declaration: article 18 guaranteed freedom of religion; article 19, freedom of the press and freedom of opinion; article 20, freedom of association; article 26, freedom of education; article 27, the right to take part in cultural life; and, lastly, article 2, on non-discrimination, expressly protected all minorities.

93. By resolution 217 C (III) of 10 December 1948, the General Assembly, considering that the United Nations could not remain indifferent to the fate of minorities, that it was difficult to adopt a uniform solution to that complex and delicate question, which had special aspects in each State in which it arose, and given the universal character of the Declaration of Human Rights, decided not to deal in a special provision with the question of minorities in the text of the Declaration. Instead, it referred to the Economic and Social Council proposals submitted by various delegations and requested the Council to ask the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities to make a thorough study of the problem of minorities, in order to enable the United Nations to take effective measures for the protection of racial, national, religious or linguistic minorities.

94. By its resolution 191 (VIII) of 9 February 1949, the Economic and Social Council transmitted the question to the Commission on Human Rights, which in turn referred it to the Sub-Commission. At its second session, in 1949, the Sub-Commission decided to include in the agenda of its next session an item entitled "Definition and classification of minorities". In order to facilitate discussion of that item by the Sub-Commission, the Secretary-General submitted a note entitled "Definition and classification of minorities" which set out in an orderly fashion the main factors to be taken into consideration in any attempt to define or classify minorities. At its fourth session, in 1951, the Sub-Commission drafted an article on the rights of persons belonging to minorities for inclusion in the International Covenant

on Civil and Political Rights. This draft article, amended by the Commission on Human Rights at its eighth session, in 1952, was subsequently adopted as article 27 of the Covenant. It reads as follows:

> "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language".

95. On the recommendation of the Sub-Commission, the Commission on Human Rights, at its ninth session in 1953, submitted to the Economic and Social Council two draft resolutions for consideration, one concerning the protection of newly-created minorities and the other concerning the abolition of discriminatory measures against minorities. After consideration of these draft resolutions, the Council adopted resolution 502 F (XVI) of 3 August 1953, in which it recommended that in the preparation of any international treaties, decisions of international organs, or other acts which establish new States, or new boundary lines between States, special attention should be paid to the protection of any minority which might be created thereby.

96. However, after considering the latter proposal, the Council, in its resolution 502 B II (XVI) of the same date, considered that, before adopting recommendations on the application of special measures to protect minorities, it was necessary to undertake a more thorough study of the whole question, including definition of the term "minority" for the purpose of such recommendations. It therefore requested the Commission on Human Rights and the Sub-Commission to continue their work on the protection of minorities with that consideration in mind, and to submit revised recommendations to the Council.

97. At its sixth session, in 1954, the Sub-Commission in resolution F pointed out that on three separate occasions (at its third, fourth and fifth sessions) it had submitted to the Commission on Human Rights a draft resolution containing a definition of minorities with a view to their protection by the United Nations, and that each time the Commission had referred the draft back to the Sub-Commission for further study. It had therefore resolved to carry out a study of current positions on minorities throughout the world and had decided that, for the purposes of the study, the term "minority" should apply only to the non-dominant groups in a population which had possessed and wished to preserve ethnic, religious or linguistic traditions of characteristics markedly different from those of the rest of the population, and that further work on the problem of defining the term would be of no use at that stage. At its tenth session, by its resolution IV, the Commission requested the Sub-Commission to continue studying all the issues, including the definition of the term "minority", and to report on the subject at a later session.

98. It was not until 1961 that the Sub-Commission took up the question of the protection of minorities again. By resolution 7 (XIII), it requested the Secretary-General to compile the texts of international instruments and similar international measures which were of contemporary interest and

provided for special protective measures for ethnic, religious or linguistic groups, and to present them, with an analysis of the special measures, for consideration by the Sub-Commission at its fourteenth session.

99. At its fourteenth session, in 1962, the Sub-Commission received and noted the compilation prepared by the Secretary-General and, in resolution 4 (XIV), requested him to prepare another document listing and classifying special protective measures of an international character for ethnic, religious or linguistic groups. In compliance with that request, the Secretary-General drafted and submitted a memorandum to the Sub-Commission at its fifteenth session in 1963. In resolution 6 (XV), the Sub-Commission took note of the memorandum as an instructive addition to the earlier compilation. By resolution 1161 (XLI) of 5 August 1966, the Economic and Social Council authorized the Secretary-General to have the memorandum and the compilation printed, circulated and made available for sale to the public as one publication.

100. At its twentieth session, in 1967, the Sub-Commission decided in resolution 9 (XX), to include in the programme of its future work and to initiate as soon as possible a study of the implementation of the principles set out in article 27 of the International Covenant on Civil and Political Rights with special reference to analysing the concept of minority taking into account the ethnic, religious and linguistic factors and considering the position of ethnic, religious or linguistic groups in multi-national societies. On the recommendation of the Commission on Human Rights, the Economic and Social Council, in resolution 1418 (XLVI) of 6 June 1969, approved the decision of the Sub-Commission and authorized it to designate a special rapporteur to carry out the study.

101. At its twenty-fourth session, in 1971, the Sub-Commission appointed one of its members, Mr. Capotorti (Italy), Special Rapporteur to carry out the study of the rights of persons belonging to ethnic, religious and linguistic minorities. The Special Rapporteur submitted a provisional report, two interim reports, a draft report and a final report to the Sub-Commission. The final report was considered by the Sub-Commission at its thirtieth session, in 1977. In it, the Special Rapporteur formulated a provisional definition of the term "minority" devised solely with a view to the application of article 27 of the International Covenant on Civil and Political Rights. In that specific context, the term "minority" may be interpreted as designating a group which is numerically smaller than the rest of the population of a State, and is not in a dominant position, whose members are nationals of the State but have ethnic, religious or linguistic characteristics which differ from those of the rest of the population and display, even implicitly, a feeling of solidarity with a view to the preservation of their culture, traditions, religion or language.

102. The recommendations made by the Special Rapporteur included: (a) the full application of the implementation procedures contained in the International Covenant on Civil and Political Rights in respect of article 27; (b) the provision of appropriate procedures at the national level to deal effectively with violations of the rights granted to members of minority groups under article 27; (c) the preparation of a draft declaration on the rights of members of minority groups, within the framework of the principles

set forth in article 27 of the Covenant. The Special Rapporteur stated further that he strongly believed that bilateral agreements dealing with minority rights concluded between States where minorities lived and the States from which such minorities originated would be extremely useful, provided that cooperation with regard to the rights of members of minority groups was based on mutual respect for the principles of the sovereignty and territorial integrity of the States concerned and non-interference in their internal affairs.

103. In resolution 5 (XXX) of 30 August 1977, the Sub-Commission recommended to the Commission on Human Rights that it should consider preparing a declaration on the rights of members of minority groups within the framework of the principles set forth in article 27 of the International Covenant on Civil and Political Rights. At its thirty-fourth session, in 1978, the Commission established an informal open-ended working group to consider the issues involved in preparing such a declaration. A draft proposed by Yugoslavia was referred to the working group. At its thirty-fifth, thirty-sixth, thirty-seventh and thirty-eighth sessions, the Commission established similar open-ended working groups. Having taken cognizance of the report of the working group, it decided in resolution 1982/38 of 11 March 1982 to establish an open-ended working group at its next session in order to continue consideration of the revised draft declaration proposed by Yugoslavia.

104. This brief recapitulation shows that the question of minorities has still not been fully settled in international law - at least in the international law created by the United Nations system - article 27 of the International Covenant on Civil and Political Rights notwithstanding. Thus it can be stated that the problem of minorities, as currently defined, does not exist in Senegal. While it is true that some international humanitarian organizations have recently been claiming that social unrest in southern Senegal stem from the existence of an ethnic or linguistic minority, this view of the situation is completely divorced from the facts because, like all African States, the sovereign State of Senegal was created by the carving-up of former French territories. Boundaries were drawn in the interests of the colonizers, but also with some regard for the social cohesion of the population groups affected.

105. As a result, Senegal has several social groups which speak different languages, six of which may be considered as the main ones. These linguistic groups are distributed evenly throughout the country and there is no such thing as the domination of one language over the other. French is the official language of the country. Another rallying factor is religion: in this area too, the three main revealed religions are practised in the country and coexist in complete harmony, even though Muslims are in the majority. Lastly, the concept of an ethnic minority in the meaning of article 27 does not square with the true situation in Senegal. Although the languages spoken in the country can be said to correspond to ethnic groups, these groups do not suggest any notion of one dominating another. On the contrary, they are culturally attuned, with a set of unwritten general rules that govern the way they behave.

106. In short, from the standpoint of article 27 of the International Covenant on Civil and Political Rights or of the Special Rapporteur's report, the problem of minorities does not exist in Senegalese society. The final point on the subject is that with such a repressive body of laws, the question of distinctions in general and minorities in particular can neither coexist with Senegalese law nor develop in such an atmosphere.

107. In conclusion, it has to be acknowledged that the description "a country governed by the rule of law" applied to Senegal is anything but a slogan: it is a fact of everyday Senegalese life.